

RULES AND REGULATIONS PERTAINING TO CHAPTER 44-63 OF THE RHODE
ISLAND GENERAL LAWS:

INCENTIVES FOR INNOVATION AND GROWTH

RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

INTRODUCTION

These rules and regulations are promulgated under the authority of Chapter 44-63-4 of the General Laws of Rhode Island, as amended, and are established for the purpose of describing the process for the determination of eligibility and allocation of credits in connection with the issuance of Innovation and Growth Tax Credits. Pursuant to R.I. Gen. Laws §§ 44-63-4, as amended, these rules have been prepared by the Rhode Island Economic Development Corporation in coordination with the Rhode Island Division of Taxation.

Pursuant to the provisions of R.I. Gen. Laws § 42-35-3(a)(3), as amended, consideration was given to: (1) alternative approaches to the regulations; and (2) duplication or overlap with other state regulations. No alternative approach, overlap or duplication nor any significant economic impact was identified; consequently these regulations are adopted in the best interest of the health, safety and welfare of the public.

The within rules and regulations were adopted on
the _____ day of _____, 2007.

**RULES AND REGULATIONS PERTAINING TO
INCENTIVES FOR INNOVATION AND GROWTH**

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1. PURPOSE

These rules implement Chapter 44-63 of the Rhode Island General Laws, the "Incentives for Innovation and Growth Act" (the "Act".) These rules govern the procedures for the application to the Rhode Island Economic Development Corporation (the "Corporation") for approval and allocation of tax credits authorized under the Act. These rules are separate from those which the tax administrator is authorized to promulgate under the Act, and should be read in conjunction therewith.

2. AUTHORITY

These rules and regulations are promulgated pursuant to R.I. Gen. Laws §44-63-4. These rules have been prepared in accordance with the requirements of R.I. Gen. Laws §42-35-1 et seq., the Rhode Island Administrative Procedures Act. The terms and provisions of these rules and regulations shall be liberally construed to permit the Corporation to effectuate the purposes the Act and other applicable state laws and regulations. If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

3. DEFINITIONS

These terms, to the extent not defined in the Act, shall be interpreted as follows:

"Act" means Chapter 44-63 of the Rhode Island General Laws, as amended.

"Corporation" means the Rhode Island economic development corporation.

"Executive employee" means any employee designated as such by the taxpayer, but in no case shall a taxpayer designate more than ten (10) executive employees.

"Innovative company" means a business entity that has established to the satisfaction of the Corporation as set forth herein that (a) its business is primarily in any of those industries or trades designated from time to time as set forth in Section 5 hereof as "Innovation Industries", (b) its growth strategy will enhance science, technology, and innovation in the state and within its economy; (c) it has a potential for success in implementing that strategy; and (d) its success in implementing that strategy will yield demonstrable results allowing the state to attract better jobs, provide better services, and develop better solutions to the problems facing the communities of the state.

"Investment" means a private contribution to the capital of a qualified innovative company in cash or a cash equivalent made in exchange for an equity interest in that company. An investment must be made after the date designated by the Corporation at the time it issues its initial certification to the company and must support or fund the growth of the company within Rhode Island. A loan or other debt instrument shall not

be considered an investment for the purposes of these regulations.

"NAICS Code" means a four digit (Industry Group) or five digit (Industry) code from the North American Industry Classification System (NAICS) as adopted by the United States Office of Management and Budget under authority of 44 U.S.C. 3504(e), as amended from time to time.

"Private contribution" shall not include any investment to the extent it is attributable either directly or indirectly to an appropriation from the state in the calendar or fiscal year in which the investment is made.

"Qualified innovative company" means any business entity that (a) is an innovative company, (b) was formed or registered to conduct business under the laws of the state and (c) has provided satisfactory evidence to the Corporation, (which shall include a written confirmation from an independent certified public accountant licensed in accordance with Section 5-3.1-5 of the Rhode Island General Laws, as amended) that the entity has in the prior two (2) calendar years had annual gross revenues of less than one million dollars (\$1,000,000).

"Rhode Island Science and Technology Advisory Council" means that body created by executive order 05-07, or any subsequently established successor entity. This shall include that public body created under the provisions of Sections 42-140-1 et seq. of the Rhode Island General Laws.

"Traded goods or services" means the services produced or goods manufactured in those industries or businesses which are capable of exporting or importing across state boundaries.

4. APPLICATION

Application to the Corporation under the Act shall be made in writing and shall include, as applicable, the following:

- a. Identification Information: Applicant company name and Rhode Island address; name of primary contact with phone/fax/email; Federal Employer Identification number[s];
- b. Narrative description of business plan and innovative processes;
- c. Date of organization of business entity, date of organization in Rhode Island, and date of initial Rhode Island employment;
- d. Description of corporate ownership and structure including headquarters or parent company address, and information about other companies which are related, affiliated, or controlled by the applicant;
- e. Name and address of any person or business entity with a 5% or greater equity interest;
- f. List of executive employees by name, title, and residential address;
- g. Amount of tax credit allocation requested;

- h. Letter from an independent certified public accountant certifying (i) audited annual gross revenues for two (2) prior calendar years; (ii) the amount of the eligible investment as defined under the Act and these regulations; and (iii) the primary NAICS code applicable to applicants business operations;
- i. Certificate of tax good standing from Rhode Island Division of Taxation;
- j. Description of any prior, current, threatened or pending audit, litigation or investigation involving the company and/or any person or business identified in Section 4(e) and the State of Rhode Island or any of its agencies or municipalities;
- k. Current number of full time employees and average salary by category of employee;
- l. Current number of part time employees and average salary by category of employee;
- m. Narrative description of benefits generally offered to employees;
- n. Projected salary ranges for anticipated new employees;
- o. Schedule of real estate owned;
- p. Schedule of anticipated capital investment in Rhode Island over five year period and brief narrative description of growth strategy;
- q. Anticipated one year and five year employment projections by category;
- r. Anticipated gross revenue projections over five year period, categorized by customer location (state/country);
- s. Description of any other tax incentives, public job training support, or publicly supported investments received by applicant in the past two (2) years;
- t. Estimated state taxes paid to Rhode Island over prior two (2) years and likely to be paid in the next five (5) years;
- u. Estimated local taxes paid to host municipality over prior two (2) years and likely to be paid in the next five (5) years;
- v. Duly authorized signature of applicant including title and date, and certification as to the accuracy of all information provided.

There shall be a two step procedure in the application process. The first step shall occur once the application is deemed complete by Corporation staff. At that time the application will be delivered to the board of the Corporation with a recommendation by the staff for initial approval or denial, and the board shall vote on the recommendation at its next scheduled meeting. In order to grant initial approval, the board must first have made a finding, in its sole discretion, that the applicant is an innovative company and that it is qualified, and eligible, as set forth herein. If the board grants initial approval then the company shall be given a tentatively allocation. The allocation is the maximum amount of credit authorized under the Act that would be allowed if the level of Investment set forth in the initial approval is completed within the period of time set forth in that approval. The allocation will also include the methodology that would be available to determine the credit if less than that amount is invested. Within 30 days after the expiration of the period of time set forth in the initial approval (or at such other date as may be determined by the Corporation) the company shall provide the Corporation with such information as it may request to determine the amount of credit under the Act that shall be allowed in connection with the application by the company. Thereafter, the

board shall determine the amount of credit that will be allocated to the company under the Act and shall provide confirmation to the company and the Division of Taxation of the allocation and grant of such credits. The Corporation shall have the discretion to determine whether a company is entitled to claim any credits authorized under the Act and the terms and conditions for the approval of any such grant. To the extent the authorization or approval of any claim for credits would cause the Corporation to exceed the level of credits it may authorize or approve in that calendar year period, the Corporation reserves the right to defer in whole in part the authorization or approval of such credits.

The applicant should be aware that the Corporation may require thirty (30) days or more to review and render a decision regarding any given application, either for initial approval or for final approval, and so proper time should be allowed prior to an anticipated claim to the Division of Taxation for credits under the Act. Where necessary documentation is not provided, review and evaluation will be delayed and a denial of approval may be issued on the basis of lack of information.

Additionally, the applicant must be aware that the application and any other information presented to the Corporation for review will become part of a public record. Any information deemed by the applicant to be sensitive or confidential should not be included in the Application. The Corporation shall bear no responsibility for the protection of sensitive or confidential information provided in this context or any other.

The Corporation may request any additional information it deems necessary to the proper consideration of the application.

5. Designation of "Innovation Industries"

The Corporation will, from time to time, by resolution of the Corporations' Board of Directors, identify certain industries as "Innovation Industries." This designation will be made upon review and after taking into consideration any advisory resolutions of the Rhode Island Science and Technology Advisory Council and shall be published in the form of a list of NAICS codes that so qualify.

6. Issuance of Approvals and Allocation Letter

The Corporation will complete its review of requests for initial approval and for final approval as soon as practicable after receiving a complete, adequately documented application and after receiving such information as may be requested by the Corporation. The Corporation will notify the applicant if additional information needed to complete the review. The Corporation reserves the right to consider requests for initial approval on a monthly, quarterly, semi-annual or other basis and reserves the right to limit the volume of credits that may be tentatively allocated to the requests that receive initial approval at such time.

In connection with the Corporation's consideration of a request for final approval of a

grant of credits, once the Corporation has verified that as of the date of the application the applicant is within the then current list of approved NAICS codes, and the amount of the equity investment in the company qualifying for the credit the Corporation shall approve and allocate credits in an amount not to exceed \$100,000 for a single applicant and \$2,000,000 in any two calendar year period. The allocation will be made in the form of a letter identifying the applicant company, identifying the beneficiary investors and/or Executive Employees of the company, and stating the amount of the credit allocated among the company and such investors and Executive Employees. The company shall be required to establish that any investor and/or Executive Employee allocated any of the credits herein that would otherwise be allocated to the company shall be entitled under the Act to claim such credits and no other or subsequent assignment or transfer of the credits shall be allowed or authorized. The letter shall include an acceptance and acknowledgement provision requiring (a) that the company accept the allocation within fifteen (15) business days of the issuance of the letter, and (b) that the company shall agree to provide annual updates to the information provided in the application for each of the next five (5) years. Updates shall include the information required by the following subsections of section "4" above: a, d, k, l, m, o, p, q, r, s, t, u, v. The Corporation will provide a copy of the application of any certified company and all updates to the application information provided hereunder to the Division of Taxation.

During the twelve (12) month period following the date of the initial allocation letter the company may designate additional executive employees and the corporation may issue an amended allocation letter.

In no case shall the Corporation approve any application or re-application for tax credit eligibility after December 31, 2016.

If the Corporation denies initial certification or declines to make an allocation the applicant may appeal that decision to the Board of Directors of the Corporation.

Certifications may only be issued in writing by the Corporation. Decisions with respect to certification and allocation are made on the basis of the information contained in the application form and other available information. The applicant's signature on any application form is a representation to the Corporation that the facts contained therein are true and correct, and the Corporation is entitled to rely thereon. If, at any time, it comes to the attention of the Corporation that information is/was misstated, misrepresented, or omitted or is materially inconsistent with representations made in an application, the Corporation may deny the requested certification or revoke a certification and allocation previously given. Upon revocation of any certification the Corporation shall provide notice of same to the Division of Taxation and any tax credits issued by the Division of Taxation but not exercised or applied by the company shall become null and void as of the date of the revocation.

7. SEVERABILITY

If any section of these regulations shall be found to be invalid by any court of competent

jurisdiction, then the remainder of these regulations shall remain in full force and effect to the extent consistent with such finding.

8. EFFECTIVE DATE

These Rules and Regulations shall take effect twenty (20) days after filing with the Office of the Secretary of State.

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